

REMARKS

The following remarks and the above amendments are submitted to address all issues in this case, and to put this case in condition for allowance. Applicant amends the claims in this case solely to better define the subject matter of the present invention, and to correct typographical errors. No new matter is added in these amendments. After the above amendment, claims 2-23 are pending in the application. Claims 7,10,12, 15, and 16 are independent.

Applicants have studied the Office Action Mailed September 25 , 2002 and have the following remarks.

35 U.S.C. §112

The Examiner Rejected claims 7 and 14 as incomplete for omitting essential elements. Applicant has amended the claims to recite that a the rigid towing member pivots with the base via a joint. The joint is believed to fill the gap the Examiner had objected to and Applicant respectfully requests the Examiner withdraw his objection to claims 7 and 14.

The Examiner Rejected claim 16 as incomplete for omitting essential elements, claim 16 has been amended to recite that the twisting is allowed via the flexible fabric. The two components are attached to different portions of the flexible fabric therefore they can bend and twist relative to each other. Additional structure may be used in addition to the flexible fabric also allowing twisting and bending The flexible fabric is believed to fill the gap the Examiner had objected to and Applicant respectfully requests the Examiner withdraw his objection to claim 16.

The Examiner rejected claims 8 and 13 as confusing as he thought it did not appear that members 38 and 36 pivot about each other. The Examiner's attention is directed to the paragraph beginning on page 11, line 23 and extending to page 12, line 6. This paragraph

discusses how the members 36 and 38 move relative to each other. Essentially, the channel portion 76 (attached to backing sheet 38) is slightly larger in cross section than the towing member 36. This allows the towing member 36 to move within the channel portion 76 and relative to the backing sheet 38. It is believed this discussion in the specification is clear and should resolve the Examiner's confusion.

The Examiner rejected claim 12 as unclear. Applicant has amended the claim to insert the accidentally omitted word "of" which he believes should relieve the confusion.

35 U.S.C. § 102

Mao

The Examiner rejected prosecution claims 2-22 based on 35 U.S.C. §102(e) as anticipated by Mao (United States Patent No. 6,279,706).

Applicant herewith resubmits his Declaration Under Rule 131 to swear behind Mao. Applicant has read the Examiner's responses on the inadequacy of the Declaration and respectfully traverses.

The Examiner states that there is insufficient evidence in the declaration to establish diligence. Applicant respectfully contends that diligence does not need to be shown as the Declaration shows actual reduction to practice prior to the filing date of the Mao reference. 37 CFR 1.131(b) states that "[t]he showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence...."

Applicant provided as Exhibit A to the Declaration photographs of an actual prototype device embodying the invention and stated that the depicted device did actually exist (was

constructed) prior to the effective date of Mao. Therefore, the Declaration shows (via testimony of the applicant and supporting documentation) that there was actual reduction to practice.

Applicant notes that the declaration clearly shows conception as it shows a backpack actually reduced to practice. The inventor must have conceived of something to have built it and reduced it to practice and the declaration includes photographs of an actual construction from a time prior to the filing date of the Mao reference.

Applicant notes that prosecution claims 2-6, 12-14, 17, and 20-22 were only rejected in light of Mao other than the §112 issues addressed above. Therefore, applicant respectfully requests the Examiner's rejection of claims 2-6, 12-14, 17 and 20-22 be withdrawn and they be allowed to continue to issuance.

Bogert

The Examiner rejected prosecution claims 7, 8, 16 and 19 based on 35 U.S.C. §102(e) as anticipated by Bogert (United States Patent No. 6,227,339). Applicant respectfully traverses the rejection as Bogert fails to show elements of the prosecution claims, as amended.

With regards to claim 16 (and claim 19 which depends therefrom) the device of Bogert includes no indication of shoulder straps having only a handle 90 for carrying. Therefore, Bogert clearly lacks an element of claim 16 and cannot anticipate claim 16 or claim 19 which depends therefrom.

With regards to claims 7 (and claim 8 which depends therefrom), Bogert does not disclose "a rigid base attached to the pack; at least two wheels mounted for rotation to the rigid base; a rigid towing member connected to the base by a joint, said joint allowing pivoting movement of the towing member relative to the base; and a resiliently flexible backing sheet attached to the towing member for movement of the backing sheet with the towing member

relative to the base, the backing sheet also being attached to the pack” as required by prosecution claim 7, as amended.

Utilizing the Examiner’s assignment of parts if Bogert has a rigid base 142, a rigid towing member, a flexible backing sheet 140, and shows the pivoting in FIG. 12 (none of which applicant admits is the correct labeling of parts), applicant notes that the wheels of Bogert are attached to the backing sheet 140 not the rigid base as required by the claim, and the rigid base is not attached to the towing member by a joint (as it is not attached to the towing member at all but only to the backing sheet). Applicant further contends that any redefinition of components would necessarily leave at least one element unfulfilled. The structure of Bogert is therefore completely different than that required by claim 7 and cannot anticipate claim 7 or claim 8 which depends therefrom.

Miyoshi

The Examiner rejected claims 10 and 11 as anticipated by Miyoshi. Applicant contends that Miyoshi does not show a towing handle that extends on an arcuate path curved away from the pack as the handle of Miyoshi extends on an arcuate path towards the pack. That is, the handle of Miyoshi may extend away from the pack (essentially a limitation inherent to the word extend), but the path is not curved away from the pack. The Examiner’s interpretation leaves the word “away” without meaning (as all handles which extend must, by definition move toward and away from what they extend relative to) and applicant argues it is therefore incorrect. However, in order to further prosecution, claim 10 has been amended to further recite that the handle moves upwardly and forwardly (what applicant argues was clearly meant by a path “away”), this motion is shown in FIG. 1 of the instant case and is clearly different from the motion of Miyoshi.

35. U.S.C. §103

The Examiner rejected claims 9 and 18 as obvious in light of the combination of Bogert and Browning and claim 15 of Bogert in view of Miyoshi.

Applicant respectfully requests that the Examiner state which Browning patent is being relied on and cite the patent in a Form 892 as applicant cannot find a reference to a Browning patent in the cited references. For purposes of this response applicant is presuming the Examiner is referring to United States Patent 4,621,404 to Browning.

Applicant contends that Browning does not show the elements missing from Bogert as discussed above. In particular Browning does not show shoulder straps and therefore the combination cannot render obvious claim 18 as it depends from claim 16 as discussed above. Further Browning shows no movement of components as discussed in claim 7 as the case is rigidly molded.

With regards to claim 15, both Bogert and Miyoshi fail to show a telescoping member mounted on a rigid base and pivotally attached thereto. Bogert lacks this type of structure as discussed above in conjunction with claim 7. Miyoshi also fails to provide for a pivotal attachment as the structure is rigidly attached as can be seen in FIG. 4. Therefore the combination cannot show the elements of claim 15.

Conclusion

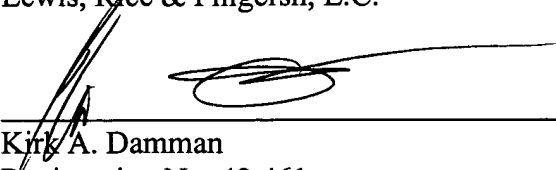
In light of the above, Applicant respectfully requests entrance of the above amendment in conjunction with the RCE and allowance of all pending claims so that this case can pass on to issue.

As a final point, there is also included herewith a petition for a three month extension of time and the associated petition fee as well as an claim fee for an additional independent claim and the fee for filing an RCE. It is believed no other fees are due in conjunction with this filing; however, the Commissioner is authorized to credit any overpayment or charge any deficiencies necessary for entering this amendment, including any claims fees and/or extension fees to/from our **Deposit Account No. 50-0975**.

If, however, any questions remain, Applicant respectfully requests a telephone call to the below-signed attorney at (314) 444-7783.

Respectfully submitted,
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